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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 76

TRAVELERS HEALTH ASSOCIATION and R. E. PRATT, as Treasurer thereof and in his personal capacity,

Appellants,

v.

COMMONWEALTH OF VIRGINIA, at the relation of the State Corporation Commission,

Appellee

Appeal from the Supreme Court of Appeals of Virginia

BRIEF FOR THE APPELLEE

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BRIEF FOR THE APPELLEE

OPINIONS BELOW

The opinion of the Supreme Court of Appeals of Virginia in this case is officially reported in Volume 188 of the Virginia Reports at page 877 and is also reported in Volume 51 of the Southeastern Reporter, 2d Series, page 263. The opinion of the State Corporation Commission of Vir-

ginia has not been officially reported, but appears in the record at page 18.

GROUNDS OF JURISDICTION

The appellants challenge the validity of section 6 of the Virginia Securities Law, Chapter 529 of the Acts of Assembly of Virginia, 1928, as amended by Chapter 236 of the Acts of Assembly of Virginia, 1932, alleging it is in violation of the Fourteenth Amendment of the Federal Constitution. The appeal is pursuant to section 1257(a) of the Judicial Code and Judiciary.

STATEMENT OF THE CASE

A.

Preliminary Statement

This case is an appeal from the judgment of the Supreme Court of Appeals of Virginia affirming a cease and desist order in the nature of a permanent injunction entered by the State Corporation Commission on January 5, 1948, pursuant to section 6 of the Virginia Securities Law, enjoining and restraining the appellants from offering, advertising, promoting, or selling membership certificates or contracts of indemnity or insurance in Virginia unless and until a permit or authorization so to do shall have been issued by the State Corporation Commission as required by the Securities Law.

B:

The Statute

This appeal raises the question of the validity of certain provisions of the Virginia Securities Law or what is gen-

erally known as the Virginia Blue Sky Law (Acts of the General Assembly of Virginia, 1928, Chapter 529, page 1373, and Acts amendatory thereof; Sections 3848(47) to 3848(66) inclusive of Michie's 1942 Code of Virginia). This statute requires every person, association or corporation desiring to engage in Virginia in the selling, promotion or offering for sale securities covered by the statute to apply for a permit so to do. Certain conditions must be complied with before a permit is issued; the applicant is required to provide detailed information with reference to the securities and the solvency of the issuer of the securities and other matters relating to the propriety of their sale; and the State Corporation Commission of Virginia is authorized to conduct such investigation as it may deem appropriate and to see to the proper application of the proceeds from the sale of the securities. In general, the statute contains provisions similar to those usually contained in the "Blue Sky" laws of the various States. The appellants admit that their membership contracts constitute "securities" within the meaning of the law. (Appellant's brief, page 4). The appellants do not claim that they have applied for or secured the required permit to sell or offer their securities for sale in Virginia or that they have complied with the conditions required before such a permit can be issued.

Section 15 of the Act (Michie's Code, section 3848(61)) provides that any person violating the Act, or who shall fraudulently evade or attempt to evade the provisions thereof, shall be guilty of a misdemeanor, where not otherwise provided, and punished by a fine or confinement in jail, or both. Proceedings to enforce the penalties provided by this section for such violations must be instituted by indictment or information in the appropriate courts of record of the State.

Section 6 of the Act, as amended by Chapter 236 of the Acts of Assembly of Virginia of 1932, (Michie's Code, section 3848(52)) authorizes the State Corporation Commission, upon its own motion, or upon complaint of any resident of the State of any violation of the Act, to issue a cease and desist order in the nature of a temporary and/or permanent injunction and restraining order against further violations, after at least ten days notice, by registered mail to persons, corporations or associations upon whom personal service can not be had because of absence from the State. Signed receipt of the registered notice is required to be returned by the postal authorities. It is this section 6 of the Act, which is set out as an appendix to appellants' brief, under which the proceedings here involved were brought, and it is this particular provision of the Virginia Securities Law which the appellants contend is invalid.

Section 17 of the Act authorizes the Commission to impose a fine not exceeding five hundred dollars for failure or refusal to comply with any lawful order made under the Act.

C.
The Facts

In the Statement of the Case contained in the appellants' brief there is no mention of certain facts found by the Supreme Court of Appeals and relied upon by it in holding that the appellants had brought themselves within the regulatory jurisdiction of the Commonwealth of Virginia. Nor do the appellants there mention the evidence, which is contained in the exhibits introduced in evidence, upon which those factual conclusions are based, though in their argument they devote nine pages of their brief to a contention that the evidence does not support the decision of the Vir-

ginia Court upon these factual matters. We will set out here the facts relied on by the Court below.

The Travelers Health Association is a non-profit membership association incorporated under the laws of Nebraska, with its home office in Omaha. Letters and other exhibits filed in the case show that the appellant, R. E. Pratt, a resident of Omaha, is the Treasurer of said association and conducts its correspondence soliciting new membership contracts, which contracts provide health insurance protection. The association has not now, nor has it ever had, any office, officer, or agent, or any bank account or property located in Virginia. At the time of the hearing of this case it had in force in Virginia approximately eight hundred membership certificates, which provided health insurance protection in the form of sickness benefit payments. The association has caused many claims asserted by its Virginia members to be investigated in Virginia. (The appellants question the finding of the Supreme Court of Appeals of Virginia that such investigations took place in Virginia, but, if investigations of claims on Virginia risks took place, as was admitted in the stipulation, it is difficult to imagine where such investigations would take place other than in Virginia).

The customary method of soliciting new members has been for the Virginia members of the association to recommend to it persons who they believe to be likely prospects. The association then writes to these persons inviting them to make application for membership. All such letters are transmitted by mail from the United States Post Office in Omaha and delivered by mail to the prospects in Virginia. If upon receipt of this letter the applicant is so disposed, he fills out the application blank and sends it by mail to the home office of the association in Omaha, where it is received and acted upon.

The exhibits contained in the record include a letter from the appellant Pratt, as Treasurer of the association, addressed to a prospective member. The letter was accompanied by an application form containing twenty-six questions to be answered by the applicant, who is instructed, after he has signed it, to forward it "with membership fee to R. E. Pratt, Treasurer," Omaha, Nebraska. The application form contemplates reference to an existing member of the association for recommendation of the applicant for membership. There appears on the application the following:

> "Money Back Guarantee
> "Our policies are issued subject to the approval of the applicant. If not satisfactory they may be returned within ten days from date of issuance and all money paid thereon will be refunded promptly."

In addition, there was also enclosed with the letter of solicitation a separate, printed "Absolute Guarantee" slip containing a provision in conformity with the one quoted above. On the face of this slip appears the following:

> "Note—It is not necessary to show the name of anyone as recommending you, as you have already been recommended to us by one of our members."

On the reverse side of said guarantee slip appears a printed copy of a letter from one of the members of the association residing at Baltimore, Maryland. In this letter the member expresses thanks for the promptness with which the association has paid benefits on account of his recent illness and concludes with this statement: "I am working on several of my friends to get them to join and expect to send you several applications real soon."

The Supreme Court of Appeals of Virginia held that the mailing of a copy of the letter received by the association from its Baltimore member stating that he was working on several friends and expected to send in their applications constituted an implied invitation to its members not only to send in the names of persons recommended for membership, but also to solicit and send in completed applications for membership. The Court further held that, while old members have not been technically designated as agents of the association or employed to solicit for it, its encouragement of that activity and the acceptance of the fruits thereof by taking the same without question, and relieving the prospective member of the requirement of furnishing a reference, constituted a ratification of the efforts of the old members and rendered the association responsible therefor. The Court also held that the forwarding of the membership certificate to the Virginia applicant, subject to his approval, rendered it merely an offer on the part of the association and that it was the approval of the provisions of the certificate and the acceptance thereof in Virginia by the prospective member which consummated the contract.

The above statement of facts is based upon the opinion of the Court below found at pages 30 and following of the record, the Stipulation of Facts found at pages 13 and 14 of the record, and the exhibits filed with the record.

D.
The Proceedings Below

Pursuant to section 6 of the Virginia Securities Act, proceedings were instituted against the Appellants by the State Corporation Commission of Virginia on May 5, 1947, in which the appellants were charged with advertising, offering for sale and promoting the sale of the securities

in question in Virginia without having procured the necessary permit or authorization and in contravention of the provisions of the Virginia Securities Act. Notices of the proceedings were sent to the appellants by registered mail, and the post office receipts, filed as exhibits, showed delivery of the same. By the Stipulation of Facts the appellants admitted actual receipt of such notice. The notice informed the appellants that at the time indicated they would be given an opportunity to be heard upon whether a cease and desist order should be entered against them.

The appellants appeared specially by counsel and objected to the jurisdiction of the Commonwealth of Virginia and the State Corporation Commission, basing their objections on the grounds asserted in this appeal. After the hearing the Commission entered the order complained of. The order recited the finding of the Commission that the appellants had been engaged in the business of soliciting membership certificates in Virginia and in advertising, promoting, offering for sale, and in selling securities in Virginia without complying with the Virginia Securities Act. The order enjoined the appellants from continuing such activities unless and until they complied with that statutory enactment. The Supreme Court of Appeals of Virginia affirmed this judgment.

THE QUESTIONS PRESENTED

By this appeal the following questions are presented:

1. May the Commonwealth of Virginia, for the purpose of protecting its citizens and residents, direct that non-residents and foreign corporations not domesticated in Virginia comply with the Virginia Securities Law before promoting and soliciting in Virginia the sale of securities to residents of Virginia

when the solicitation and making of the offers of sale of such securities are carried on in the manner adopted by the appellants? and

2. May the State Corporation Commission, after notice by registered mail, enter an order directing non-residents and foreign corporations doing business in Virginia in the manner and by the means adopted by the appellants to cease and desist from such activities until they comply with the Virginia Securities Law?

The second question stated above is the one directly involved in this proceeding, but the first is embraced therein and since it is the primary and fundamental question it has been stated first.

OUTLINE OF ARGUMENT

In Part I of the argument in the appellants' brief it is contended that the proceedings in the State Corporation Commission of Virginia were in personam and that notice given by registered mail sent beyond the boundaries of the State was not sufficient upon which to base the action taken. We think that, in order to determine whether the action complained of could be taken after such notice, it is first necessary to consider the objects and purposes of the Virginia Securities Law and the real purpose and effect of the order entered in this case. Moreover, if the first question stated above is answered in the affirmative, we think it will readily be seen that the second question should also be answered in the affirmative. Therefore, as suggested by our statement of the questions presented, we will reverse the order of argument of the points involved adopted by the appellants and will attempt to sustain the following propositions in the order set out here:

I. The Commonwealth of Virginia may regulate the promotion of the sale of securities in Virginia by non-resident individuals and corporations as well as by residents, whether the same be carried on by the use of the mails or not.

II. The order or decree complained of is not such an order or decree in personam as must be supported by personal service of process upon persons physically present in Virginia.

III. The activities of the appellants in Virginia were sufficient to support proceedings under section 6 of the Virginia Securities Law had after actual notice sent by registered mail.

ARGUMENT

I.

The Commonwealth Of Virginia May Regulate The Promotion Of The Sale Of Securities In Virginia By Non-resident Individuals And Corporations As Well As By Residents, Whether The Same Be Carried On By The Use Of The Mails Or Not.

On page 32 of the appellants' brief it is contended that section 6 of the Virginia Securities Law as applied to them violates the Fourteenth Amendment of the Federal Constitution in attempting to regulate and control their activities occurring beyond the borders of Virginia.

The action of the Commonwealth of Virginia as embodied in section 6 of the Virginia Securities Law and the order of the State Corporation Commission complained of are directed at *activities which take place in Virginia*. It affects action taken without the State only in so far as such action results in forbidden activity in Virginia. In *Osborn* v.

Osbin, 310 U. S. 53, it was forcefully brought out that insurance contracts with Virginia citizens on Virginia risks (and we are here concerned with securities in the form of insurance contracts) are very definitely a matter of local concern to Virginia. Mr. Justice Frankfurter pointed out that the mere fact that State action may have repercussions beyond State lines is of no judicial significance so long as the action is not within that domain which the Constitution forbids. In that case the Court concluded that, in passing the Virginia registered resident agent law, Virginia had exerted its powers as to matters within the bounds of its control. See also *Hoopeston Canning Co. v. Cullen*, 318 U. S. 313.

The promotion of securities within Virginia, their advertisement in that State and offers for their sale made there are very much the concern of the Commonwealth of Virginia and the regulation of those engaged in such activities is a matter clearly within the police power of Virginia. The opportunity for fraud in the sale of securities is manifest and it is well established that a State may, in the exercise of its police power, take legitimate measures to prevent the practice of fraud or imposition upon its citizens through the offer, advertisement, promotion and sale of securities. It may require those dealing in securities to meet statutory requirements designed to prohibit fraudulent securities and to authorize only those which involve no fraud, actual or potential, and then only after a full disclosure of all of the facts. See the three leading cases of *Hall v. Geiger Jones Co.*, 242 U. S. 539; *Caldwell v. Sioux Falls Stock Yards Co.*, 242 U. S. 559, and *Merrick v. N. W. Halsey & Company*, 242 U. S. 568, in which the "Blue Sky" laws of Ohio, South Dakota and Michigan were upheld. In *Hall v. Geiger Jones Co., supra*, the Court said:

"It will be observed, therefore, that the law is a regulation of business, constrains conduct only to that end, the purpose being to protect the public against the imposition of unsubstantial schemes and the securities based upon them. Whatever prohibition there is, is a means to the same purpose, made necessary, it may be supposed, by the persistence of evil and its insidious forms and the experience of the inadequacy of penalties, or other, repressive measures. The name that is given to the law indicates the evil at which it is aimed; that is, to use the language of a cited case, 'speculative schemes which have no more basis than so many feet of "blue sky" '; or, as stated by counsel in another case, 'to stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines, and other like fraudulent exploitations.' Even if the descriptions be regarded as rhetorical, the existence of evil is indicated, and a belief of its detriment; and we shall not pause to do more than state that the prevention of deception is within the competency of government, and that the appreciation of the consequences of it is not open for our review. * * * " (242 U. S. 539, 550)

As stated in Section 19 of the Virginia Securities Law, the purpose of the statute is not to prevent the sale of any particular kinds of securities, but is to give the State Corporation Commission the power to regulate the sale of securities and to require promoters of securities to *make proper disclosure of material facts* to and for the benefit of the public and to require the promoters of securities to apply the proceeds of the sale thereof to the purposes for which they are sold. The Act provides that no securities designated by the Act shall be *offered for sale, advertised for sale*, sold, disposed of, distributed or *promoted* except after qualifications and the submission of certain data and information required by the Act. As pointed out in *Virginia Brewing Co. v. Webber*, 167 Va. 67, and *Watters &*

Martin v. *Hoines Corp.*, 136 Va. 114, the object and purpose of the Blue Sky Law is to suppress the evil of an investment market flooded with investments of little or no value and promoters who induce the public to purchase that type of securities by regulating the business of those promoting the sale of securities.

The regulation of such activities when conducted by non-residents is even more important than when they are conducted by residents because of the difficulties which citizens of Virginia would have in securing redress from such non-residents in cases of fraud. At page 4 of the appellants' brief it is stated that there is no charge or intimation that the membership certificates offered by the appellants were fraudulent, misleading or inferior. That is not the question. The appellants have never submitted their securities to the regulatory agency of the Commonwealth of Virginia nor submitted the required information upon which such questions could be checked before a permit to offer them in Virginia is issued. While their securities may be entirely satisfactory, their contention that they are not subject to supervision by Virginia because of the manner in which they do business would be just as valid if applied to the most unsatisfactory and worthless securities. If the appellants be sound in their contention that those who promote the sale of securities in Virginia by the means adopted by the appellants cannot be called by the State to answer proceedings to require them to comply with the preliminary requirements of the Virginia Securities Law designed to protect the public from the promotion of worthless securities, how much more helpless would be the Virginia residents who succumb to their inducements and invest funds in such securities.

At page 9 of the appellants' brief it is stated that the order complained of prohibits the appellants from acquiring

additional members for the association in Virginia, even though the appellants in so doing are not present in and perform no acts within Virginia. This is not correct. Section 6 of the Virginia Securities Law expressly provides that it shall not be construed so as to impair or infringe upon the right of any person, *of his, her or its own initiative*, to subscribe for, order, or buy any security from any non-resident person, firm, corporation or association. See appendix to appellants' brief at page 41. The decretal paragraph of the order complained of applies only to activities which occur *in Virginia*. It orders the appellants to cease and desist "from offering, advertising, promoting, selling, assisting or participating in or acting in furtherance of the offer, advertisement, sale and/or promotion *in Virginia*" of securities until a permit has been secured.

The appellants cite a number of cases in support of the proposition that a state cannot prohibit a non-resident from making a contract beyond its borders with one of its citizens. This Virginia has not attempted to do by the statute here involved. It is only when the non-resident, of his own initiative, comes into Virginia or projects his activities across the borders of this State for the purpose of promoting, advertising and making offers for sale of securities in Virginia that his activities come within the terms of the statute. While the State may not be able to prevent the making of contracts outside of its limits, yet when the non-resident carries on promotional activities within the State, his conduct is properly subject to regulation by Virginia.

The solicitation, the promotion, the advertising, and the making of the offers for sale take place in Virginia. The fact that neither the appellants nor their agents are present in Virginia is not material. The public of Virginia is nevertheless being subjected to their inducements to purchase their securities. In *Illgeyer* v. *Louisiana*, 165 U. S. 578, the

Court said that the mere fact that a citizen may be within the limits of a particular State does not prevent his making a contract outside its limits while he himself remains within it. It is also true that the mere fact that a person is not within the limits of a particular State does not prevent his making an offer for sale or carrying on promotional activities within its limits while he himself remains out of it.

The fact that the activities of the appellants which took place in Virginia may have originated without the State is immaterial. The use of the mails to send promotional material and offers of sale of securities into Virginia has resulted in the commission of an offense within this State.

The general rule is thus stated in 14 Am. Jur., Crim. Law, section 227:

> "A question often arises as to the jurisdiction of a crime where the accused, while in one state, sets in motion a force which operates in another state, as where a shot is fired at a person across a state line or an injurious substance is sent to a person in another state with intent to injure him. In such cases the view has generally been taken that actual presence in a state is not necessary to make a person amenable to its laws for a crime committed there; for if a crime is the immediate result of his act, he may be made to answer for it in its courts, although actually absent from the state at the time he does the act. * * *"

In *Palliser* v. *United States*, 136 U. S. 257, 266, the following was said:

> "When an offense is committed by means of a communication through the postoffice, the sender has sometimes, as appears by the cases cited for the petitioner, been held to be punishable at the place where he mails the letter." (Citing authorities) "But it does not follow that he is not punishable at the place where the

letter is received by the person to whom it is addressed; and it is settled by an overwhelming weight of authority that he may be tried and punished at that place; * * *" (Citing authorities)

United States v. *Steinberg, et al.*, 62 F. (2d) 77, involved the jurisdiction of a United States District Court of New York to indict and punish a defendant who was accused of using the United States mails to defraud. The letter in question was mailed in Canada, and the defendant claimed that he had not committed any criminal act within the State of New York and that court was without jurisdiction to try the offense. In affirming a judgment of conviction by the District Court, the Circuit Court of Appeals of the Second District used this language:

"* * * It has long been a commonplace of criminal liability that a person may be charged in the place where the evil results, though he is beyond the jurisdiction when he starts the train of events of which that evil is the fruit. *Strassheim* v. *Daily*, 221 U. S. 280, 284, 31 S. Ct. 558, 55 L. Ed. 735; *Lamar* v. *U. S.*, 240 U. S. 60, 64, 65, 66, 36 S. Ct. 255, 60 L. Ed. 526; *Ford* v. *U. S.*, 273 U. S. 593, 620, 621, 47 S. Ct. 531, 71 L. Ed. 793. The constitutional question is frivolous." (62 F. (2d) 78).

The Supreme Court denied a writ of certiorari to review this case. *Steinberg* v. *U. S.*, 289 U. S. 729.

That the contention of the appellants is unsound and that Virginia may regulate the promotion of securities in this State by non-residents who conduct such activity only by the use of the mails is clearly shown by *Merrick* v. *N. W. Halsey & Co.*, *supra*. In that case one of the complainants attacking the Michigan Blue Sky Law had no offices in Michigan, had no salesmen there, and merely solicited

orders for the purchase of securities by means of the mails. They wished to continue making further offers in the State and contended that the statute constituted an unlawful regulation of interstate commerce. This contention the Court rejected on the authority of its decision in *Hall* v. *Geiger-Jones Co., supra.*

In *State of West Virginia* v. *Adams Express Co.*, 219 Fed. 794 (C. C. A. 4th Cir., 1915), the State of West Virginia sought an injunction against the Adams Express Company, R. H. Clendenin and Edward Beigel, alleging: That Beigel, a resident of Ohio, sent through the mails to persons in West Virginia circular letters soliciting the purchase of intoxicating liquors, contrary to the law of the State; that Clendenin, induced by the solicitation, ordered beer from Beigel, which was carried from Cincinnati to Charleston, West Virginia. Contending that the Express Company was aiding Beigel in his unlawful attempt to make sales in West Virginia, the State sought an injunction to prevent delivery of the beer unless the consignee could show that he ordered the same without having received from Beigel letters advertising the beer or soliciting orders for its purchase.

Against the contention that the State law could not prevent solicitation through the United States mails the Court held:

> "It makes no difference that the United States mail was used for the solicitation. The federal government does not protect those who use its mails to thwart the police regulations of a state made for the conservation of the welfare of its citizens. The use of the mail is a mere incident in carrying out the illegal act, and affords no more protection in a case like this than a like use of the mails to promote a criminal conspiracy, or to perpetrate a murder by poison, or to solicit con-

tributions of office holders in violation of the civil service law, or to obtain goods under false pretenses. *In re Pallister*, 136 U. S. 257, 10 Sup. Ct. 1034, 34 L. Ed. 514; *United States* v. *Thayer*, 209 U. S. 39, 28 Sup. Ct. 426, 52 L. Ed. 673; *Hayner* v. *State*, 83 Ohio St. 178, 93 N. E. 900; *State* v. *Morrow*, 40 S. C. 221, 18 S. E. 853." (219 Fed. 794, 799).

Just as Federal protection to the liquor traffic had been withdrawn by the Wilson Act and the Webb Kenyon Act, so here has Federal protection been withdrawn from the promotion of the sale of securities by means of the United States mails. Congress in enacting legislation regulating the sale of securities by means of the use of the mails expressly provided as follows:

> "Nothing in this subchapter shall affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia over any security or any person." Title I. Section 18 of the Securities Act of 1933 (Title 15, Section 77-r of United States Code Annotated).

It was clearly the intention of Congress to leave the States free to exercise such regulatory control over the sale of securities as does not conflict with the provisions of the Federal Act, and, in the absence of such conflict, it is contemplated that the States and the Federal Government shall exercise concurrent jurisdiction. If a non-resident wishes, by means of the mails or otherwise, to advertise, promote or offer his securities for sale in Virginia, he must comply with the appropriate regulations of that State and, if he carries on such activities in Virginia without so doing, he

commits an offense in Virginia. *In re Pallister, supra* and *United States v. Steinberg, supra.*

We have pointed out above that the conduct of such activities is properly a matter for the State to regulate. The question is not, as in *Allgeyer v. Louisiana, supra*, whether a state may prohibit its citizens from making elsewhere a contract of insurance with a non-resident company, but whether the non-resident company has the unrestricted right to solicit insurance within the state. As stated in *Osborn v. Ozlin, supra*, considerable doubt has been cast upon the opinion in the *Allgeyer Case*, but accepting it as in full force, it is well established that a foreign corporation has no constitutional right to solicit insurance within a state by means of an agent in violation of the laws of the state. *Bothwell v. Buckbee*, 275 U. S. 274; *Nutting v. Massachusetts*, 183 U. S. 553. There is a broad distinction between the want of power of a state to prevent a resident from making a contract elsewhere and the power of the state to regulate the carrying on within its borders of the business of soliciting orders for such contracts. *Delamater v. South Dakota*, 205 U. S. 93.

If a State can regulate such solicitation and promotional activities when carried on through an agent present in the State and the use of the mails does not exempt the promoter's activities from regulation, there is no reason why such promotional activities are not subject to regulation simply because the promoter has chosen a postman as his agent to deliver his promotional material rather than some other individual.

This is not such a case as was presented in *New York Life Insurance Company v. Head*, 234 U. S. 149, or in *Hartford Accident and Indemnity Company v. Delta and*

Pine Land Company, 292 U. S. 143, where one State attempted to extend the effect of its laws beyond its borders so as to destroy or impair the rights of citizens of *other States* to make a contract *not operative within its jurisdiction* and lawful where made. Nor is it such a case as was presented in *St. Louis Cotton Compress Company* v. *Arkansas*, 260 U. S. 346, and in *Compania General de Tabacos* v. *Collector of Internal Revenue*, 275 U. S. 87, in which a State is attempting to exact a tax or a penalty upon actions taken wholly without the State. In *Fidelity & D. Co.* v. *Tafoya*, 270 U. S. 426, the State of Mexico sought to prohibit the payment of any premium to non-residents for obtaining insurance contracts on risks in New Mexico. This, the Court held, went beyond any legitimate interest of the State.

The question presented by this case is more nearly parallel to that presented in *Hoopeston Canning Co.* v. *Cullen*, *supra*, where regulations governing dealings of foreign insurance companies with citizens of New York with respect to New York risks, which regulations were designed to protect the citizens of New York, were under consideration. In that case the Court said:

> "In determining the power of a state to apply its own regulatory laws to insurance business activities, the question in earlier cases became involved by conceptualistic discussion of theories of the place of contracting or of performance. More recently it has been recognized that a state may have substantial interests in the business of insurance of its people or property regardless of these isolated factors. This interest may be measured by highly realistic considerations such as the protection of the citizen insured or the protection of the state from the incidents of loss. * * *

"The actual physical signing of contracts may be only one element in a broad range of business activities. Business may be done in a state although those doing the business are scrupulously careful to see that not a single contract is ever signed within that state's boundaries. Important as the execution of written contracts may be, it is ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction.

* * * * *

"These regulations cannot be attacked merely because they affect business activities which are carried on outside the state. Of necessity, any regulations affecting the solvency of those doing an insurance business in a state must have some effect on business practices of the same company outside the state. Nothing in the Constitution requires a state to nullify its own protective standards because an enterprise regulated has its headquarters elsewhere. The power New York may exercise to regulate domestic insurance associations may be applied to foreign associations which New York permits to conduct the same kind of business. The appellants cannot, by spreading their business and activities over other states . . . set at naught the public policy of New York. * * *" (318 U. S. 313, 316, 317, 320)

The activities which the Commonwealth of Virginia regulates by its Blue Sky Law are activities conducted in Virginia and the order here complained of is directed only at such activities in that State. The fact that the activities in Virginia had their origin in actions taken without the State is immaterial. The regulations of such activities resulting in Virginia are designed to protect Virginia citizens and are fully within the power of that State to adopt.

II.

The Order Or Decree Complained Of Is Not Such An Order Or Decree In Personam As Must Be Supported By Personal Service Of Process Upon Persons Physically Present In Virginia.

While the soliciting of orders for the sale of securities and similar promotional activities conducted in Virginia by non-residents is a proper matter for regulation by the State, the Legislature realized that the actual enforcement of such regulation against non-residents who remained physically beyond the boundaries of the State would present practical difficulties. It provided, therefore, by section 6 of the Virginia Securities Law (section 3848(52) of Michie's Code, 1942) that, upon complaint that such a non-resident is promoting in this State securities which have not been qualified, the State Corporation Commission may, after ten days notice sent by registered mail, issue a cease and desist order enjoining such activities and give such publicity to the order as it may see fit "including notice in either case to the public through the press or otherwise as the Commission may, in its discretion, determine to be advisable for the reasonable information and protection of the public."

The General Assembly has thus adopted this as a practical method of protecting the public from the inducements of promoters operating from without the limits of the State. It has provided that the public shall be informed that the non-resident is promoting securities which have not been qualified under the law of Virginia and without complying with those statutory provisions designed to furnish a measure of protection to the public. Residents of Virginia will then be advised that, if they wish to invest in the security offered, they do so wholly at their own risk.

The appellants contend that the proceedings and the cease and desist order entered therein are such proceedings and order in personam as must be supported by personal service upon persons physically present in Virginia. It is contended that the final order of the State Corporation Commission of January 5, 1948, issued pursuant to section 6 of the Virginia Securities Law, is an in personam decree in the form of a permanent injunction prohibiting the appellants from carrying on certain activities on pain of fine or imprisonment. There is nothing in section 6 of the Virginia Securities Law which authorizes the State Corporation Commission to impose a fine or to imprison the appellants. In prescribing the procedure to be followed under section 6, the General Assembly of Virginia has authorized the State Corporation Commission in proceedings had thereunder to issue a cease and desist order in the nature of a permanent injunction enjoining further illegal activities in Virginia. By the order issued in this case no fine was imposed. The appellants were simply ordered to cease their activities in Virginia until they had complied with the Virginia law.

The order itself does no more than the statute has already done. It simply tells the appellants to cease promoting securities in Virginia until they have secured the necessary permit so to do. It is simply a directive to the appellants, given after actual notice, to comply with the statute. Actually such an order or decree could be issued by an administrative officer without any hearing and after no notice whatsoever. Since the order requires nothing not already required by law, notice and an opportunity for hearing are not required to meet the constitutional requirements of due process of law. It is no ground for complaint that the appellants have in fact been given actual notice and a full opportunity to be heard.

This case is similar to the case of *Stevens* v. *Television, Inc.*, 111 N. J. Eq. 300, 162 Atl. 248, where the Attorney General of New Jersey, acting under the Blue Sky Law of that State, sought an injunction to restrain the defendants from the further sale of securities in New Jersey. The defendants were served by registered mail forwarded to addresses beyond the boundaries of the State. The New Jersey Court said in answer to an argument similar to that presented by the appellants here:

> "The argument is that the suit is in personam and that there can be no personal judgment without personal service within the state. As a general proposition the legal principle is correctly stated. Pennoyer v. Neff, 95 U. S. 714, 24 L. Ed. 565. But the Fourteenth Amendment, which declares that no state shall deprive any person of life, liberty, or property without due process of law, is not invaded; it is not depriving one of his liberty or property to deny him license to defraud. This is not a case seeking a personal recovery against the defendants; it is to foreclose them. The state is not asking anything of them; it wants nothing from them. The police having driven them across the Hudson, the state seeks assurance, by the injunction, that they will not return unless to show to the court that they are not guilty of the offenses with which they are charged. If they do not avail themselves of the opportunity to contest the merits, they cannot, on special appearance, be heard to assail the power of the state to enforce its police regulations against marauders, nor question the court's jurisdiction to banish them for failure of service of process within the state, which they have made impossible or for want of a hearing before condemning, to which they refuse to respond. The statutory process puts them on notice. They have their choice of appearing and proving their innocence or the consequences, by staying away. They

may submit to our jurisdiction or decline; in either event they will be estopped from denying it.

"That the state has power to ordain against imposition in the sales of fraudulently represented securities is established by law. Hall v. Geiger Jones Co., 242 U. S. 539, 37 S. Ct. 217, 61 L. Ed. 480, L. R. A. 1917 F, 514, Ann. Cas. 1917 C, 643; Merrick v. N. W. Halsey & Co., 242 U. S. 568, 37 S. Ct. 227, 61 L. Ed. 498. That it may prescribe the means of protection and the methods of enforcing them necessarily flows from the power to decree and the physical power to enforce its decree. Substituted service—with actual notice—is a valid exercise of the police powers and consistent with due process of law provision of the Federal Constitution. Rubin v. Goldberg, 154 A. 535, 9 N. J. Misc. 400." (102 A. 248, 248)

In the more recent case of *Wilentz* v. *Edwards*, 134 N. J. Eq. 522, 36 Atl. (2d) 423, proceedings under the New Jersey Securities Law, similar to those involved here, were had after notice by registered mail. There the Court said:

"In such case the Chancery decree last made is nominated a 'final decree'. That is a misnomer. The defendants are forbidden to deal in securities within the state until they shall submit to the inquiry sought to be made on behalf of the State. Such a prohibition is in the nature of a preliminary restraint regardless of the name applied to the paper. The title was doubtless given by way of distinguishment from the order to show cause which also contained a restraint.

"* * * Do our constitutional provisions require that a dealer in securities must be brought into court by such a process as would support a judgment against him *in personam* before he may be put to the election of either submitting the bona fides of his conduct as a dealer and the worthfulness of his securities to a duly authorized state officer, or of refraining from

dealing in securities within the state? And if he is keeping himself outside the jurisdiction, with the result that such process may not be served, is a sovereign state powerless to protect its public against his coming surreptitiously within its borders and accomplishing his purpose? We think not. So far as the present issues go there was no need for technical process; that which is called process may be regarded merely as statutory notice that the defendants could not do business here unless they complied with the regulatory requirements. The question of what character of notice of the restraint would lay the individual open to punishment under contempt proceedings or otherwise for disobedience is not before us.

"The cases lose much of their difficulty if it be considered that the Attorney General's position is analagous to that of a licensing officer and that the decrees go no further than to enjoin a dealer from engaging in the security business within the state until he shall have gone through the procedure of appearing and submitting the facts incidental to an application. * * *" (30 Atl. 2d 423, 426)

The Court pointed out that the terms *in personam* and *in rem* came into our jurisprudence from the civil or Roman law and that, while an effort has been made to maintain a sharp distinction, "nice accuracy has more than once yielded to the exigencies of a developing jurisprudence, and, that which is not strictly a thing has nevertheless been given the significance thereof in order to keep the power of the law abreast of changing conditions."

The above cases from the New Jersey Court are cited because of the parallel of the proceedings there involved and the one followed under the Virginia statute and because of the excellent discussion of the nature of the proceedings. As in the cases before the New Jersey Court, the order here complained of does not take anything away from the appel-

lants, nor does it require any action by them. So long as the appellants do not attempt to promote the sale of securities in Virginia in violation of the Securities Law of that State, they are free to go their way. The order entered by the Virginia State Corporation Commission simply tells them that they cannot engage in their promotional activities in Virginia until they comply with the terms of that statute. As pointed out by the Supreme Court of Appeals of Virginia, this was not a proceeding seeking a rendition of a *pecuniary civil judgment* against the appellants. In speaking of the nature of the proceedings the Court below said:

> "The proceeding here before us, however, is essentially different in its nature. It was instituted, not by a contract holder, but by the Commonwealth. The appellants were being investigated by the Commission to determine whether their activities did in fact violate the Securities Act and constitute the commission in Virginia of a misdemeanor. The inquiry is quasi-criminal in its approach." (R. p. 30)

and again:

> "* * * This proceeding is somewhat analogous to the customary preliminary hearing, conducted in cases where an accused is suspected of having committed a felony, to determine whether the charge against him is supported by sufficient evidence to justify laying it before a grand jury. The chief difference is that, in the proceedings here under review, the question to be determined was whether the evidence justified a finding that the Virginia Securities Law was being violated and supported the consequent order to discontinue such violations. The Commission found that the evidence was sufficient to show that such law was being violated, and we concur in that view and in the propriety of the entry of the order requiring such discontinuance." (R. p. 40)

Here, the proceedings also differ from the customary preliminary hearing in criminal matters, in that no penalty is imposed nor are the appellants held pending further proceedings because of their past violations. They are simply told not to continue their activities in Virginia until they have first complied with the Virginia law. Appellants argue that, since sections 15 and 17 of the Virginia Securities Law,* provide for fines and imprisonment (section 17 provides only a fine) for the violation of the Securities Law or orders of the Commission issued thereunder, an order issued under section 6 is an *in personam* judgment.

Sections 15 and 17 of the Virginia Securities Law are not involved in proceedings under section 6, which provides for an independent proceeding to accomplish the purposes there set out. Section 15 of the act provides that any person violating the act, or who shall fraudulently evade or attempt to evade the provisions thereof, shall be guilty of a misdemeanor, where not otherwise provided, and punished by a

* Section 15. Any issuer, promoter, dealer, broker, agent, advertiser, or other person, as principal or otherwise, who shall commit, in whole or in part, in this State any act declared unlawful by this act or who shall fraudulently evade or attempt to evade the provisions thereof, shall be deemed guilty of a misdemeanor where not otherwise provided, and on conviction, be punished by a fine of not less than twenty-five nor more than five thousand dollars, or by confinement in jail for not less than thirty days or more than one year, or by both such fine and imprisonment. Indictments or presentments charging violation of this act shall not be certified to a justice of the peace for trial, but the jurisdiction for trial shall be in the courts of record having jurisdiction of felonies. The court before whom such fine is imposed shall order one-half of such fine to be paid to the person or persons instigating the prosecution in which such fine was imposed.

Every sale or contract made in violation of any of the provisions of this act shall be voidable at the election of the purchaser, and the person making such sale or contract for sale, and every agent of or for such seller who shall have participated or aided in any way in making such sale, shall be jointly and severally liable to such purchaser, upon tender to the seller or in court of the securities sold or

fine or confinement in jail or both. Proceedings to enforce the penalties of such violations must be instituted by indictment or information in the appropriate courts of record of the State. Section 15 has no relation whatsoever to section 6.

Section 17 authorizes the Commission to impose a fine not exceeding five hundred dollars for failure or refusal to comply with any lawful order made under the law. As pointed out by the State Corporation Commission in its opinion, Record, page 23, this section is not involved in proceedings under section 6, which section does not provide for the imposition of penalties upon those proceeded against thereunder. The State Corporation Commission held, just as did the New Jersey Court in *Wilentz* v. *Edwards, supra*, that the question of what character of process would lay the individual open to punishment under contempt proceedings or otherwise for disobedience was not before the Court and that it would be time enough to determine that question

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of the contract made, for the full amount paid by such purchaser, together with all taxable court costs and reasonable attorney fee in any action brought under this section, or any action or suit in which the question of the validity of the sale or contract is cognizable, and the right to such avoidance shall be barred by the lapse of two years from the date of sale of the security or land, except where there has been an actual concealment of the facts constituting a violation of this act.

The limitation of any prosecution for a violation of any act declared by this chapter to be a misdemeanor shall hereafter be two years from date of violation.

Section 17. In the event of the failure of any promoter, or of any other responsible person or corporation subject to any of the provisions of this act, to comply with any order which the commission is authorized by this act to make, then it shall be unlawful for such security or such land to be sold until such order is complied with or set aside, as herein provided, and the commission shall have power to impose a fine not exceeding five hundred dollars, for failure or refusal of any person or corporation to comply with any order which the commission may have made, under authority of this act, such fine to be collected by its process, as provided by law.

if and when actions are laid under sections 15 or 17 of the Virginia Securities Law.

If it be true that proceedings can be had in the future under section 17 for a violation of an order issued under section 6, it is not section 6 or the proceedings had thereunder or the order issued therein which will cause the imposition of any penalty. Rather it will be the actions of the appellants themselves in wilfully violating the statute that will subject them to such penalties. The statute, itself, makes it unlawful to promote the sale of securities in Virginia without complying with certain conditions. The order issued under section 6 puts the appellants on actual notice and directs them not to violate the law in the future. If the appellants wilfully violate the statute after receiving such notice and thereby subject themselves to an added penalty, they have only themselves to blame. There is no lack of due process in a statute which provides for such a preliminary warning.

III.

The Activities Of The Appellants In Virginia Were Sufficient To Support Proceedings Under Section 6 Of The Virginia Securities Law Had After Actual Notice Sent By Registered Mail.

We are not concerned here with the question of whether the appellants are *doing business* in Virginia to such an extent that would justify substituted service of process as the basis of an action brought by a private individual to secure a *pecuniary civil judgment* against them. We are here concerned with whether *the particular proceeding* now before the Court could be had and whether the *particular order entered in this case* could be entered after actual notice sent by registered mail.

The appellants assert that they may illegally promote the sale of securities in Virginia by use of the mails and at the same time contend that the Commonwealth of Virginia may not order them to cease violating the statutes of Virginia after giving them actual notice of the proceedings by the very means they themselves are using. The appellants obviously wish to conduct certain activities in Virginia; else they would not be complaining of an order which simply directs them not to do certain things *in Virginia*. Yet they claim that it is a denial of due process to require them to answer in Virginia proceedings brought to determine whether such activities constitute a violation of the laws of Virginia and, if it be so found, to compel them to cease such activities. The appellants simply wish to have their cake and eat it too.

Of the seventeen cases cited by the appellants to show that personal service of process upon someone physically present in Virginia should have been had, fifteen, including the much relied upon *Minnesota Commercial Men's Asso.* v. *Benn*, 261 U. S. 140, were cases in which a *pecuniary civil judgment* was sought against the defendant. One, *Providence Savings Life Assurance Society* v. *Kentucky*, 239 U. S. 103, did not involve service of process and the other, *W. S. Tyler Co.* v. *Ludlow-Saylor Wire Co.*, 236 U. S. 723, was an action by one corporation against another alleging a patent infringement and asking appropriate relief. Service was had upon a soliciting agent who received and forwarded to his principal one order for goods which was accepted in another State. The circumstances of only one sale appeared in the record and *that was negotiated by the purchaser in order that it might afford the basis for a suit.* The Court held that, since the sale was consummated in St. Louis, the patent infringement did not occur in New York and that

the United States District Court did not have jurisdiction under the Act of March 3, 1897, which required the suit to be brought where the infringement took place.

As we have pointed out under Part II of our argument, this is not a case in which a pecuniary civil judgment is sought against the appellants. It is an action of an entirely different nature, brought because of the very activities which the appellants are carrying on in Virginia, and concerns those activities only. Even if the proceedings in question be considered as *in personam* proceedings, it is but proper that the appellants be called upon to answer them in Virginia. Actual notice of the proceedings sent by registered mail fully meets all requirements of due process of law.

Beginning with *Hess* v. *Pawloski*, 274 U. S. 352, it has been recognized that in certain cases (even in some instances where a money judgment is sought) it is proper to require a non-resident to answer for his conduct in a State giving rise to causes of action against him, provided the provisions for notice are adequate to apprise him of the proceedings and he is given adequate opportunity to present his defense. In *Wuchter* v. *Pizzuti*, 276 U. S. 13, the Court stated that a number of cases there reviewed—

> "* * * indicate a general trend of authority toward sustaining the validity of service of process, if the statutory provisions in themselves indicate that there is reasonable probability that if the statutes are complied with, the defendants will receive actual notice, and that is the principle that we think should apply here." (276 U. S. 13, 24)

In the case of corporations which have no physical "presence" a multitude of cases have been decided on the questions of when they can be called upon to answer an

action in a particular case and of what type of process will suffice to bring them before the Court. A number of fictions have been resorted to, enlarged upon and modified. Throughout all of the cases the concept of fairness and reasonableness appears to be the controlling factor. In *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, the Court upheld *criminal process* upon an agent who had not been designated by the company as one to receive summonses on behalf of the company. The Court discussed the activities of the agents of the company and concluded that the company was present "doing business" in Kentucky. It stated:

> "We are satisfied that the presence of a corporation within a state necessary to the service of process is shown when it appears that the corporation is there carrying on business in such sense as to manifest its presence within the state, although the business transacted may be entirely interstate in its character. In other words, this fact alone does not render the corporation immune from the ordinary process of the courts of the state." (234 U. S. at page 589)

An excellent discussion of the growth of the law in this connection is contained in the opinion of the late Mr. Justice Rutledge in the case of *Frene* v. *Louisville Cement Co.*, 134 Fed. 2d 511 (U. S. Court of Appeals for the District of Columbia, 1943) decided before he was elevated to the bench of this Court. In that case Mr. Justice Rutledge was leaning toward the decision of this Court in the case of *International Shoe Co.* v. *Washington*, 326 U. S. 310, in which was sustained the jurisdiction of the Washington State Courts to entertain an action for the recovery of unemployment compensation taxes arising out of salaries paid the agents of the company for their services in soliciting orders in the State, although the solicitors had no authority to bind the

company or to accept service of process, their authority being strictly limited to taking orders and submitting them to the home office of the company in St. Louis, Missouri. In that case Mr. Chief Justice Stone said:

"Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. Pennoyer v. Neff, 95 U. S. 714, 733. But now that the capias ad respondendum has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' * * *

"Since the corporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact, Klein v. Board of Supervisors, 282 U. S. 19, 24, 75 L. Ed. 140, 143, 51 S. Ct. 15, 13 ALR 679, it is clear that unlike an individual its 'presence' without, as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it. To say that the corporation is so far 'present' there as to satisfy due process requirements, for purposes of taxation or the maintenance of suits against it in the courts of the state, is to beg the question to be decided. For the terms 'present' or 'presence' are used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process. L. Hand, J., in Hutchinson v. Chase & Gilbert (CCA2d) 45 F. 2d 139, 141. *Those demands may be met by such contacts of the corporation with the state of the forum* as make it reasonable,

in the context of our federal system of government, to require the corporation to defend *the particular suit which is brought there.* An 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection. Hutchinson v. Chase & Gilbert, supra (P. 141).

"'Presence' in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. * * *

* * *

"But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.

* * *

"Applying these standards, the activities carried on in behalf of appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the state, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of those very activities. It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say that the maintenance of the present suit in the

State of Washington involves an unreasonable or undue procedure.

"We are likewise unable to conclude that the service of the process within the state upon an agent whose activities establish appellant's 'presence' there was not sufficient notice of the suit, or that the suit was so unrelated to those activities as to make the agent an inappropriate vehicle for communicating the notice. *It is enough that appellant has established such contacts with the state that the particular form of substituted service adopted there gives reasonably assurance that the notice will be actual.* * * * *Nor can we say that the mailing of the notice of suit to appellant by registered mail at its home office was not reasonably calculated to apprise appellant of the suit.* * * * " (326 U. S. 310, 316-320) (Italics supplied)

In that case the defendant corporation maintained no office or place of business in Washington, had no property there, and made no contracts there or deliveries of goods there in intrastate commerce. It did have salesmen there soliciting orders, but no salesman had authority to bind the company by entering into contracts or to make collections. The salesmen were not the corporation since a corporation has no personality. It was their activities in the state that gave the court its jurisdiction. In that case the corporation conducted no activities within the state through its salesmen which the Travelers Health Association does not conduct in Virginia, though without the means of salesmen present in Virginia. The Commonwealth of Virginia has the same "contacts, ties or relations" with the Travelers Health Association as Washington had with the International Shoe Company, even though no salesmen of the association are in Virginia. That association is conducting exactly the same "activities" in Virginia as the shoe company conducted in Washington. Systematic solicitation can be conducted

by agents dressed in the uniform of the United States Post Office as well as by private individuals dressed in an ordinary business suit. Can it be said to be unreasonable that the Travelers Health Association, which desires to conduct activities in Virginia, should, after actual notice, be required to defend this particular suit brought to direct them to comply with the laws of Virginia before continuing such activities?

In *Storey* v. *United Insurance Co.*, 64 F. Supp. 896 (D. C. East. Dist. of S. C.) decided in 1946 after the decision in the *International Shoe Company Case, supra*, substituted service of process under a South Carolina statute was held sufficient to give jurisdiction to render an in personam judgment in a civil action for money brought by the beneficiary of an insurance policy against a non-resident insurance company that maintained no place of business in South Carolina, had no property there and had never maintained agents, solicitors or representatives there and never transacted business there except through the use of the mail facilities of the United States Government. The company solicited insurance contracts by advertisements in publications having a national circulation and as a result of such advertisements the plaintiff wrote the company inquiring about its insurance contracts and the company, in response to such inquiry, forwarded by mail an application form with an invitation that it be filled out and returned. The contract was later mailed to the plaintiff. While the court construed the contract as having been made in South Carolina because of the insured's right to reject the same when delivered and construed it as payable in South Carolina upon the event of loss and as giving the company the right to make an autopsy in South Carolina upon the death of the insured, it would seem that the activity of the United Insurance Company in South Carolina was far less than

that of the Travelers Health Association in Virginia, where the latter company has by sending its mail solicitations into the State secured some 800 members.

It is the position of the appellee that activities of the Travelers Health Association conducted by mail, that is the advertising, promotion and offers of sale of its securities that are so carried on in Virginia, were sufficient "activities" in and "contacts" with the Commonwealth of Virginia to sustain the proceedings here in question and the order here complained of, and were sufficient to authorize the statutory process provided for such proceeding and order. The Supreme Court of Appeals, however, actually found that the activities of the Travelers Health Association went beyond the mere mailing of its promotional material and its offers of sale of its securities into Virginia. The Court below found that the Travelers Health Association encouraged and received the benefit of the activities of its members in soliciting new members in Virginia; that, since the contracts were subject to approval by new members, the contracts were consummated in Virginia; that the association had caused claims to be investigated in Virginia; and had discharged obligations in Virginia. The finding of the Court below as to these additional activities is clearly supported by the evidence, which includes the exhibits filed with the record. The evidence clearly supports the conclusion that there were sufficient activities to call upon the association to answer the proceedings instituted after actual notice sent by registered mail.

CONCLUSION

In their conclusion the appellants state that they wish to emphasize that they do not question the power of Virginia to regulate and control insurance companies to the extent

that they or their agents do business within its borders and that they do not question the validity of the Securities Law to the extent that it provides that individual and corporate residents of other States shall not come into the State for the purpose of doing business there without first submitting to the regulatory authority of the State.

It is the contention of the appellee that the appellants have "come into Virginia" and this without complying with the regulatory provisions of the Virginia statute. The appellants have exerted their efforts in Virginia with quite some measure of success. By projecting its activities across the borders of that State, the Travelers Health Association has secured some 800 members and, if left to its own devices, it will undoubtedly secure many more without ever complying with the Virginia statute. We believe it has been said that "By their works, ye shall know them", and by their "works" the appellants have come into Virginia and should be made to comply with its regulations. The appellants, however, desire the power to come into Virginia without so doing.

It is respectfully submitted that the decisions of the Supreme Court of Appeals of Virginia in upholding the order of the State Corporation Commission entered on January 5, 1948, and sustaining the constitutionality of section 6 of the Virginia Securities Law should be affirmed.

Respectfully submitted,

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